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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE COMPETITION IN
THE PROVISION OF ELECTRIC SERVICES
THROUGHOUT THE STATE OF ARIZONA.

DOCKET NO. RE-00000C-94-165

STAFF'S REPLY COMMENTS
RE: DECISION No. 61071

I. Introduction.

Many of the parties submitting written comments have incorporated by reference comments previously provided on earlier drafts of the rules. Those drafts were circulated prior to the Commission's adoption of the rules in Decision No. 61071. Because many of the earlier comments have been incorporated into the rules as adopted by the Commission, it can be somewhat confusing to determine which specific comments are being advocated at this time.

In this filing, Staff has attempted to review all comments which have been incorporated by reference and determine which have already been addressed in the rules. Staff is here addressing only those comments which have not been adopted or otherwise addressed.

II. Comments On R14-2-1601. Definitions.

A. R14-2-1601.5. Competition Transition Charge.

APS suggests that this definition of Competition Transition Charge (CTC) be modified by adding the word "purchasing" after "customers," apparently for purposes of clarification. Citizens suggests that the definition be expanded to include "other Commission-allowed costs attributable to the introduction of competition" in order to allow for inclusion of new costs, such as load profiling, into the Competitive Transition Charge.

Staff Response: Staff believes that the definition is sufficiently clear without the language suggested by APS. As to the language suggested by Citizens, Staff believes that adding costs to the Competitive Transition Charge in addition to Stranded Costs would be inappropriate. The CTC is not intended as a recovery mechanism for all costs associated with the move to competition. To do so would be to engage in piecemeal and asymmetrical ratemaking, looking only

1 at new costs without examining savings that may occur at the same time or which may have occurred
2 since the last rate case. Staff therefore recommends that Citizens' language not be adopted.

3 **B. R14-2-1601.9. Current Transformer.**

4 Citizens suggests that the words "energy consumption" be replaced with "electric
5 current" to provide a more precise definition.

6 **Staff Response:** Staff believes that the definition is sufficiently precise, and that no
7 change is required.

8 **C. R14-2-1601.10. Direct Access Service Request.**

9 CellNet argues that in reference to the Direct Access Service Request (DASR)
10 process, it would be problematic to allow the customer to submit the DASR request form directly
11 to its Utility Distribution Company without going through the new Electric Service Provider. In
12 addition, CellNet believes that the rule should require that the DASR forms be submitted using
13 Electronic Data Interchange (EDI).

14 **Staff Response:** CellNet has provided no justification for its conclusion that
15 allowing customers to submit a DASR form would pose problems. Staff believes that CellNet's
16 recommendation in this regard should not be adopted. Although CellNet's suggestion that EDI be
17 utilized for submission of DASR forms has merit, Staff believes that it is not necessary at this time
18 to make it a requirement, as doing so could make it difficult for a customer without EDI capability
19 to submit the form.

20 **D. R14-2-1601.12. Distribution Primary Voltage.**

21 AEPCO recommends that the words "as it relates to metering transformers" be added
22 to the definition of Distribution Primary Voltage, apparently for clarification.

23 **Staff Response:** Staff believes that the definition is sufficiently precise, and that no
24 clarification is needed.

25 **E. R14-2-1601.13. Distribution Service.**

26 Citizens suggests replacing "to deliver" with "governing the delivery, measurement,
27 and billing" in order to add needed clarity.

28 **Staff Response:** Staff believes that the definition is sufficiently clear as written.

1 **F. R14-2-1601.16. Electric Service Provider Service Acquisition Agreement.**

2 CellNet suggests that the Commission take a more active role in defining the content
3 and general provision of electric service provider service acquisition agreements.

4 **Staff Response:** CellNet provides no specific recommendations as to what the
5 agreements should contain. Staff believes that it is appropriate to allow the Electric Service Provider
6 (ESP) and Utility Distribution Company (UDC) to negotiate the content of the agreements. The
7 requirement of R14-2-1603.G that Affected Utilities or their successor entities negotiate in good
8 faith allows the use of the Commission's complaint procedure if an Electric Service Provider is
9 unable to reach an agreement.

10 **G. R14-2-1601.22. Load-Serving Entity.**

11 CellNet points out that the phrase "excluding a Meter Reading Service" should be
12 changed to "excluding a Meter Service Provider."

13 **Staff Response:** Staff agrees with CellNet's comment, and recommends that the
14 suggested change be made.

15 **H. R14-2-1601.23. Meter Reading Service.**

16 Citizens suggests that the definition of "meter reading service" be modified by adding
17 the words "validation, posting and storage" in order to make the definition more complete.

18 Arizona Public Service (APS) recommends that the words "for non-Standard Offer
19 and other customers of non-competitive electric services" be added at the end of the definition
20 because meter reading for Standard Offer and other non-competitive electric service customers
21 remain regulated.

22 **Staff Response:** Staff believes that the definition's inclusion of all functions related
23 to the collection and storage of consumption data renders the definition sufficiently complete. As
24 to APS' comment, Staff believes that the additional language is unnecessary because the context in
25 which the term is used in the rules makes clear whether the reference is to a monopoly or
26 competitive service. Staff therefore believes that no changes are necessary to this definition.

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1 **I. R14-2-1601.24. Meter Reading Service Provider.**

2 Citizens suggests changing the word "validated" in the two places it occurs to
3 "billing-ready" in order to avoid a circular definition and to utilize industry-accepted language.

4 **Staff Response:** Staff agrees with this comment, and recommends that Citizens'
5 recommendation be adopted.

6 **J. R14-2-1601.26. Metering and Metering Service.**

7 APS recommends that the words "for non-Standard Offer customer, excepting those
8 functions related to distribution primary voltage CT's and PT's above 25 kV" be added at the end of
9 the definition because PT's and CT's above 25 kV and Standard Offer metering remain regulated.

10 **Staff Response:** Staff believes that the additional language is unnecessary because
11 the context in which the term is used makes clear whether the reference is to a monopoly or
12 competitive service. Staff therefore believes that no changes are necessary to this definition.

13 **K. R14-2-1601.27. Must-Run Generating Units.**

14 Arizona Electric Power Cooperative (AEPCO) recommends that the definition of
15 "must-run generating units" be modified to reflect current consensus thinking within the Reliability
16 Working Group. AEPCO's suggested change is to eliminate the word "distribution" before "system
17 reliability," and to replace from "in times of congestion" to the end of the definition, with ", voltage
18 requirements, system reliability and contingencies to meet load on certain portions of the
19 interconnected transmission grid."

20 **Staff Response:** Staff believes that the definition is sufficiently precise, and that no
21 clarification is necessary.

22 **L. R14-2-1601.29. Noncompetitive Services.**

23 CellNet suggests that the reference to R14-2-1613 be changed to R14-2-1613.J, since
24 section J is the only relevant part of that rule.

25 **Staff Response:** Staff agrees with this comment.

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1 **M. R14-2-1601.30. Oasis.**

2 The Attorney General believes that the definition of "OASIS" appears to be a
3 particular brand name, and recommends that the rule define a technical standard rather than a brand
4 name.

5 **Staff Response:** Staff agrees with the thrust of the Attorney General's comment and believes
6 that the rule as written is consistent with that comment. "OASIS" is not a brand name but is in fact
7 an acronym used in the industry for the type of electronic bulletin board described in the rule.

8 **N. R14-2-1601.32. Potential Transformer.**

9 Enron recommends that "120V" should be replaced with "levels more appropriate"
10 and that "(e.g., 115 or 120 volts)" should be added at the end of the definition.

11 **Staff Response:** Staff believes that the rule encompasses primary voltage levels
12 below 120V, and that no change is necessary.

13 **O. R14-2-1601.35. Scheduling Coordinator.**

14 AEPCO suggests changing the definition by replacing "Control Area Operator" with
15 "Control Area Operator/Transmission Owner" in order to reflect current consensus among the
16 Reliability Working Group.

17 APS believes that the words "designated by the Commission" should be added after
18 "entity" to put the Commission in charge of determining both the number and qualifications of
19 Scheduling Coordinators.

20 **Staff Response:** Staff believes that the definition is sufficiently precise and that the
21 additional language suggested by AEPCO is unnecessary.

22 As to APS' suggestion, Staff believes that the Commission does not need to play a
23 role in designating Scheduling Coordinators. Scheduling Coordinators are not public service
24 corporations and do not require certificates of convenience and necessity from the Commission.

25 **P. R14-2-1601.39. Stranded Cost.**

26 AEPCO suggests that the definition of Stranded Cost be expanded to include one time
27 costs incurred by Affected Utilities for changes to infrastructure required as a result of the rules.

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1 The Attorney General recognizes that the rule complies with the Commission's
2 decision on stranded costs, Decision No. 60977, but argues that the Commission lacks the lawful
3 authority to designate any cost, whether related to a "taking" or not, as stranded cost. The Attorney
4 General urges the Commission continue to utilize the definition as originally adopted in the rules.

5 Enron recommends that the word "book" be inserted before "value" in subsection a.i.
6 of the definition.

7 APS recommends that a new subsection d. be added, which reads "other transition
8 costs as approved by the Commission." APS states that this is consistent with Decision No. 60977.

9 The Residential Utility Consumer Office (RUCO) suggests that the phrase "prior to
10 the adoption of this Article" in subsection a.i. should be replaced with "prior to December 26, 1996,"
11 in order to minimize confusion in light of the amendments to the rules being adopted.

12 **Staff Response:** Staff believes that the rule is consistent with Decision No. 60977,
13 the Commission's stranded cost order. The language suggested by both AEPCO and APS would
14 expand the definition beyond what is contained in that decision, and therefore should not be adopted.

15 Staff disagrees with the conclusion of the Attorney General that the Commission
16 lacks the legal authority to determine stranded costs. The Commission's expansive ratemaking
17 authority under Article XV of the Arizona Constitution certainly encompasses the ability to
18 determine what costs, whether designated as "stranded" or some other label, are recoverable by a
19 utility. The rule as written is a lawful modification to the original definition.

20 Staff agrees with Enron that the "value" referred to in subsection a.i. is "book value."
21 However, Staff believes that because the comparison in subsection a.ii. is to "market value," the
22 word "book" is implicit in subsection a.i. Staff does not believe that any change is required.

23 Staff agrees with RUCO that confusion can be avoided by using the date December
24 26, 1996 instead of referring to the date of the adoption of the rules.

25 **Q. R14-2-1601.40. System Benefits.**

26 APS recommends that "customer education" be included in system benefits.
27
28

1 RUCO objects to the inclusion of nuclear power plant decommissioning costs in
2 system benefits because those costs relate to generation and should therefore be included in
3 generation costs.

4 **Staff Response:** Staff believes that it is not necessary to determine the specific
5 recovery mechanism for customer education costs in the rules. The Commission should not make
6 a determination on the recovery mechanism until it has considered all appropriate options.

7 Staff disagrees with RUCO on the inclusion of nuclear decommissioning costs in
8 system benefits. Palo Verde was built to serve all of APS' customers, and in fact APS' customers
9 have utilized Palo Verde power for the past several years. A necessary cost of a nuclear plant is the
10 cost of decommissioning that plant at the end of its life. Because APS' customers have enjoyed the
11 power from Palo Verde, they should also bear a responsibility for paying the costs of
12 decommissioning the plant. Staff believes that it is appropriate to recover those costs from all APS'
13 customers through the system benefits charge.

14 **R. R14-2-1601.41. Transmission Primary Voltage.**

15 Tucson Electric Power Company (TEP) believes that the rule should state that
16 Transmission Primary Voltage is defined under the Affected Utility's FERC Open Access
17 Transmission Tariff.

18 APS has concerns that the definition of Transmission Primary Voltage as being above
19 25 kV conflicts with the FERC's definition of transmission for APS as being 69 kV and above.

20 **Staff Response:** Staff believes that qualifying language in both this definition and
21 in the definition of Transmission Service at R14-2-1601.42 should alleviate the concerns of both
22 TEP and APS. Specifically, this definition applies only "as it relates to metering transformers." In
23 addition, the definition of Transmission Service incorporates not only the FERC definition, but also
24 any such classification by the Commission to the extent permitted by law. In light of this additional
25 language, Staff believes that TEP's and APS' concerns do not necessitate any changes to the rules.

26 **S. R14-2-1601.43. Unbundled Service.**

27 CellNet points out a potential contradiction between the definition of Unbundled
28 Service and R14-2-1616.B. According to CellNet, while this definition authorizes unbundled

1 services to be sold to consumers, R14-2-1616.B appears to limit Affected Utilities and Utility
2 Distribution Companies to providing certain unbundled services to customers within their service
3 territories only when those customers do not have access to the services.

4 **Staff Response:** R14-2-1616.B. does not limit the unbundled services that an
5 Affected Utility or Utility Distribution company may offer. Indeed, it expands them in certain
6 circumstances. Otherwise, as noted elsewhere in R14-2-1616.B, neither Affected Utilities nor Utility
7 Distribution Companies would be allowed to offer these services under any circumstances. They
8 could only be offered by affiliates. Staff therefore disagrees that an inconsistency exists and believes
9 that no change to the rule is necessary.

10 **T. Other Comments.**

11 In addition to comments on specific definitions contained within R14-2-1601, several
12 parties recommended that new definitions be added. The Attorney General recommended that
13 several distinct product and service lines be defined in the rules, such as retail generation and
14 services, wholesale generation and services, transmission services, distribution services, and
15 marketing and customer services (including demand management). Many of these definitions have,
16 in fact, been included in the rules. However, Staff believes that any definitions that have not been
17 included are not crucial to the proper interpretation and functioning of the rules, and therefore does
18 not recommend the adoption of such definitions.

19 APS suggests several new definitions, including Metering Committee, Meter Service
20 Provider, Billing and Collection Service Provider and Nuclear Fuel Decommissioning. References
21 to the Metering Committee have been deleted, obviating the need for that definition. A definition
22 of Meter Service Provider has been included. Staff does not believe that definitions of Billing and
23 Collection Service Provider and Nuclear Fuel Decommissioning as proposed by APS in its July 6,
24 1998, comments, are necessary to the proper interpretation and functioning of the rules.

25 CellNet recommends that a definition of "Universal Meter Identifier" be included as
26 referenced in the Metering Subcommittee recommendations. However, since the phrase is not
27 utilized in the rules, no such definition is required.

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1 Finally, Staff recommends that R14-2-1601.4, defining Buy-through, be modified by
2 replacing "Affected Utility" with "load-serving entity" in order to conform to Staff's comments
3 regarding R14-2-1604.

4 **II. Comments on R14-2-1603. Certificate Of Convenience And Necessity.**

5 **A. R14-2-1603.A.**

6 Tucson Electric Power filed comments suggesting that the phrase "or self-
7 aggregation" be eliminated from this subsection.

8 The Western Area Power Administration recommended that Scheduling Coordinators
9 be required to obtain Certificates of Convenience and Necessity (CC&Ns).

10 Finally, ASARCO Incorporated, Cyprus Climax Metals Company, Arizonans for Electric Choice
11 and Competition, Morenci Water and Electric Company, Ajo Improvement Company, and Phelps
12 Dodge Corporation all suggested adding metering and meter reading services to the services that do
13 not require CC&Ns.

14 **Staff Response:** Staff believes that an individual entity should not have to become
15 a certificated ESP to aggregate its own load. Therefore, Staff does not believe changes to this
16 subsection as suggested by TEP are needed.

17 Staff also contends that the change suggested by the Western Area Power
18 Administration is not necessary. An Electric Service Provider may also be its own Scheduling
19 Coordinator. The Independent Scheduling Administrator will determine the qualifications of an ESP
20 to become its own Scheduling Coordinator. Also, the Scheduling Coordinator does not provide a
21 competitive retail electric service.

22 With respect to the comments of ASARCO, et al., Staff believes that metering and
23 meter reading services should require certification because of the safety and reliability issues
24 associated with metering. Therefore, Staff believes that the rule should not be changed.

25 **B. R14-2-1603.B.**

26 New Energy Ventures (NEV) submitted comments arguing that the rule requiring
27 tariffs with maximum rates be filed should be eliminated.

1 RUCO proposes modifying the language of paragraph B.5. to require that unaudited
2 information be identified as such, and the preparer identified. Distinguishing between audited and
3 unaudited information permits a reviewer of the filing to assign the appropriate level of scrutiny to
4 the data, potentially saving resources for other areas.

5 **Staff Response:** Staff believes that the public interest requires that maximum rates
6 be set by the Commission. This mechanism has been in effect for quite some time in the telephone
7 industry and gives participants in the market the flexibility to compete on price, while also protecting
8 the public. Staff therefore does not believe that a change to this rule is necessary.

9 Insofar as the RUCO suggestion is concerned, Staff believes that no change is
10 necessary since most financial reports are already identified as being audited or unaudited.

11 **C. R14-2-1603.C.**

12 Enron Corporation has suggested that this subsection be modified to require changes
13 to a CC&N application only when the changes are material.

14 **Staff Response:** Staff feel the applicant should not be the position of making a
15 determination of any item change in a CC&N application item being a material change. Staff
16 contends that no change is necessary.

17 **D. R14-2-1603.E.**

18 The Attorney General feels that this rule should not require any applicant for a CC&N
19 to notify its competitor or the UDC. According to the Attorney General's Office, the special notice
20 implies a right to object at the CC&N stage, which a competitor should not have.

21 **Staff Response:** As a holder of a CC&N for a given service area, the Affected Utility
22 should know if it will be subject to competition in its service territory. Staff contends that no change
23 is necessary.

24 **E. R14-2-1603.G.**

25 Many of the comments filed regarding this subsection dealt with the Service
26 Acquisition Agreement.

27 PG&E Energy Services recommended that the rule should be modified to motivate
28 the Arizona Affected Utilities to negotiate a "reasonable *standard*" ESP Service Agreement. Its

1 proposed modification would include a deadline and standards for agreement terms extended by the
2 UDC to an ESP.

3 The Attorney General feels the requirement that an ESP have a Service Acquisition
4 Agreement is unreasonable without some deadline for the UDC to act in a non-discriminatory
5 manner to close an ESP application for such an agreement. The Attorney General also feels that R14-
6 2-1603.G.5 should be stricken, stating that certification of a bona fide competitor is by definition in
7 the public interest, and that requiring an applicant to demonstrate that its certification would be in
8 the public interest is an unnecessary burden.

9 TEP want the rules to specify the terms and conditions of the service acquisition
10 agreement.

11 ASARCO, et al., recommend that the entire section be deleted. If the CC&N
12 applicant avoids being denied a CC&N for all other items public interest should not be the test as
13 to whether an applicant is certified. Instead of public interest, competition should be the test.

14 **Staff Response:** The proposed rules require good faith bargaining on the part of the
15 UDC to negotiate a service acquisition agreement. The proposed rules provide that the terms and
16 conditions of the service acquisition agreement should be negotiated and then submitted to the
17 Director of the Utilities Division for approval. Staff therefore contends that no change to the rules
18 are necessary as the result of the comments from PG&E Energy Services, Attorney General's Office,
19 or TEP.

20 Staff disagrees with ASARCO et al. and the Attorney General's Office that CC&Ns
21 are not necessary in an era of competition. Staff believes that the public interest still needs to be
22 considered when deciding if a given entity is fit and proper to provide service. The public interest
23 requires that the chances of an entity not being able to provide service should be minimized, exactly
24 what the CC&N process is designed to accomplish. Staff contends that no change is necessary.

25 **F. General Comments.**

26 TEP has commented that Staff is attempting to add more rules to the package through
27 the material it is requesting in the CC&N application. TEP also raises the concern that the amended
28 rule does not address the settlement process between ESPs and UDCs, the process by which the

UDC determines whether the actual power used by the ESP's customers is greater than, equal to or less than the power scheduled and delivered by the ESP and the reconciliation of resulting differences. This includes the issues relating to pricing of such power variances.

The Attorney General suggests that the entire section be changed into a licensing procedure and not a CC&N procedure that limits geographic territory. This, the Attorney General's Office asserts, would prevent most of the litigation of competition/CC&N being in the public interest.

Staff Response: R14-2-1603.B.8 allows the CC&N application to include such other information as the Commission or Staff may request to make a determination as to whether granting the application would be in the public interest. Therefore, Staff believes that TEP's comment is without merit and that no change to the rule is necessary.

With respect to TEP's comments about the settlement process, the continued position of Staff is that the acquisition service agreement between the ESP and UDC should be negotiated and the agreement submitted to the Director, Utilities Division for approval. Staff contends that no change is necessary.

Staff believes that the CC&N process as outlined in the rule is appropriate. Most ESPs will probably seek statewide authority to provide services in order to give themselves maximum flexibility to expand. Additionally, as noted above, due to reliability and safety concerns, the Commission has a legitimate interest in ensuring that a provider, at least at the outset, will serve the public interest by entering the electric market.

III. Comments on R14-2-1604. Competitive Phases.

A. R14-2-1604.A.

Arizona Electric Power Cooperative, Duncan Valley Electric Cooperative (DVEC), and Graham County Electric Cooperative (GCEC) have suggested that the 40 kW requirement for eligibility be based on an annual average, not a one month peak.

APS has recommended that the 40 kW minimum requirement for eligibility be raised to 100 kW.

1 ASARCO, Cyprus Climax Metals Company, Enron Corporation, Arizonans for
2 Electric Choice and Competition, Morenci Water and Electric Company, Ajo Improvement
3 Company, and Phelps Dodge Corporation have recommended that the loads of all special contract
4 customers be eligible for competitive services upon expiration of the contracts.

5 PG&E has recommended that the 40 kW minimum requirement for eligibility be
6 reduced to 20 kW.

7 TEP believes that "non-coincident peak" should not be used as a criterion to
8 determine eligibility of customers with demands of 1 MW to participate in the competitive market
9 during the phase-in.

10 TEP has also suggested that energy consumption over 6 months instead of 1 month
11 be used as a criterion to determine eligibility of customers with 40 kW demands who do not have
12 peak load data available.

13 **Staff Response:** Staff recommends that the suggestion of AEPCO, et al. be rejected
14 and that no change be made because using an annual average would reduce the number of customers
15 eligible to participate in the onset of competition.

16 Staff recommends that the suggestion of APS be rejected and that no change be made
17 because raising the minimum requirement would reduce the number of customers eligible to
18 participate in the onset of competition.

19 Staff recommends that the suggestion of ASARCO, et al. be rejected and that no
20 change be made because the loads of contract customers should be subject to the same 20%
21 limitation as other customer loads and all eligible customers should participate on a first-come, first-
22 served basis.

23 Staff recommends that the suggestion of PG&E be rejected and that no change be
24 made because Staff believes that 40 kW is a reasonable minimum requirement.

25 Customers who currently are billed a demand charge can look at their bills to
26 determine their "non-coincident peak." If "coincident peak" is used, only the Affected Utility would
27 know whether a customer's load reached 1 MW at the time of the utility's peak. Customers should
28 have the capability to determine their eligibility and not be dependent on the Affected Utilities for

1 that determination. Therefore, the suggestion of TEP on this matter should be rejected and Staff
2 believes that no change to the rule is necessary.

3 Staff believes, in response to TEP's other suggestion that one month's consumption
4 is sufficient for the purpose of determining eligibility. Staff therefore believes that no change to the
5 rule is necessary.

6 **B. R14-2-1604.B.**

7 AEPCO, et al. have suggested that load profiling not be used for residential
8 customers. They have also stated that the January 1, 1999 implementation date for the residential
9 phase-in program is not achievable.

10 CellNet has recommended changing the first sentence to begin "In addition to the
11 minimum 20%..." instead of "As part of the minimum 20%...". If not changed, then the amount of
12 load reserved for residential customers needs to be clarified to indicate whether the reserved amount
13 is based on 1/5% of residential customers or the sum of the increases, 4% of residential customers.

14 New Energy Ventures has recommended that customers in the competitive market
15 have real-time interval meters instead of allowing load profiling for residential customers.

16 RUCO has proposed that the size of the residential phase-in program be significantly
17 expanded.

18 RUCO has also proposed revised language in R14-2-1604.B.3. to make this section
19 consistent with R14-2-1613.J.7 in regard to load profiling. The changes are to delete the words
20 "Load profiling may be used; however," in the first line and insert "shall be permitted to use load
21 profiling to satisfy the requirements for hourly consumption data; however, they" after "program"
22 in the second line.

23 **Staff Response:** Staff recommends that no changes be made to the rules as the result
24 of the comments of AEPCO, et al. because load profiling will be needed as a practical matter and
25 that the January 1, 1999 implementation date is indeed achievable.

26 Because the rule requires Affected Utilities to make available only 20% of their load
27 to competition, the residential phase-in program must be part of the 20% of load. The load
28

1 associated with 4% of residential customers would have to be reserved within the 20% of load.
2 Therefore, Staff recommends that no change be made as the result of Cellnet's suggestion.

3 Staff recommends no change be made as the result of New Energy Ventures'
4 suggestion because load profiling will be needed as a practical matter.

5 Staff recommends that no change be made because Staff believes that the residential
6 phase-in program as described in the rule is adequate.

7 Staff agrees that rule R14-2-1604.B.3 should be clarified as proposed by RUCO.

8 **C. R14-2-1604.C.**

9 The Arizona Community Action Association (ACAA) asserts that to provide small
10 customers with real opportunities or benefits since many will have to wait longer than larger
11 customers to participate in competition, ACAA has recommended that Section C be revised as
12 follows:

13 Each Affected Utility shall file a report ~~by September 15, 1998,~~ detailing possible
14 mechanisms to provide benefits, such as rate reductions of 3% - 5%, ~~to all Standard Offer customers~~
15 over and above those already planned, to all customers determined not to be eligible for competitive
16 electric services directly or through aggregation in a manner consistent with R14-2-1604 (B). It is
17 the intent of the Commission that customers not able to participate in the competitive market see real
18 benefits in lieu of competitive opportunities.

19 ASARCO, et al. have recommended that any rate reductions given to Standard Offer
20 customers be reflected on the distribution portion of bills so as to promote competition rather than
21 discourage competition.

22 RUCO has proposed that the Affected Utilities be required to request rate decreases
23 for Standard Offer customers instead of merely being required to detail possible mechanisms to
24 provide benefits.

25 **Staff Response:** The required reports were filed by September 15, 1998. Staff is
26 reviewing the reports with the intention that customers not eligible to participate in the onset of
27 competition be given the greatest benefits possible. Therefore, no change is necessary as the result
28 of the ACAA's suggestion.

1 Staff recommends that the rate reductions not be reflected on the distribution portion
2 of bills because it could mislead customers into thinking that they would continue to receive the
3 discount if they later obtain competitive services. Staff therefore believes that the suggestion of
4 ASARCO, et al. should be rejected.

5 In response to RUCO's suggestion, Staff believes that the Commission does not have
6 the authority to require utilities to request rate decreases. Therefore, a change to the rule would not
7 be appropriate.

8 **D. R14-2-1604.G.**

9 ASARCO, et al. have recommended that the word "may" be replaced with "shall"
10 in the first line. This would require Affected Utilities, Utility Distribution Companies, and Load-
11 Serving Entities to engage in buy-throughs with customers beginning January 1, 2001, instead of just
12 allowing buy-throughs to occur.

13 RUCO has suggested that the terms "Affected Utility" and "Utility Distribution
14 Company" are redundant because "Load-Serving Entity is defined to include both of those entities.
15 In addition the reference to the "date indicated in R14-2-1604(A)" is vague.

16 **Staff Response:** Staff recommends that no change be made as the result of the
17 suggestion of ASARCO, et al. because Affected Utilities, Utility Distribution Companies, and Load-
18 Serving Entities should not be required to enter into buy-throughs.

19 Staff agrees with RUCO that changes need to be made to the rule and recommends
20 that the section be changed as follows to incorporate Staff's intent of the section: "~~An Affected~~
21 ~~Utility, Utility Distribution Company, or Load-Serving Entity~~ may, beginning January 1, ~~2001~~1999,
22 engage in buy-throughs with individual or aggregated consumers. Any buy-through contract shall
23 ensure that the consumer pays all non-bypassable charges that would otherwise apply. Any contract
24 for a buy-through effective prior to ~~the date indicated in R14-2-1604(A)~~ January 1, 1999 must be
25 approved by the Commission.

26 **IV. Comments on R14-2-1605. Competitive Services.**

27 Rule R14-2-1605 was amended to clarify what services constituted competitive and
28 noncompetitive services. The rule was further amended to define self-aggregation services as not

1 requiring a certificate whereas aggregation of customers in a purchasing group is considered a
2 competitive service under the rules. Several parties filed comments concerning the amendment of
3 1605.B.

4 The Arizona Consumers Council commented that without a CC&N or other similar
5 registration, the ACC would be unable to control anti-competitive or other questionable activities
6 of the providers of services for which no CC&N is required under the rule.

7 New Energy Ventures filed comments that 1605.B needs clarification related to the
8 obligations and opportunities for UDCs to provide metering, billing and information services.
9 NEV's comments are concerned with when an ESP provides the consolidated metering and billing
10 for energy transmission and distribution, a customer may encounter a problem from the UDCs that
11 could insist on also providing metering and billing for transmission and distribution and thus impose
12 an additional cost on the customer. NEV suggests that the rule be amended to specifically set out
13 the responsibilities of the UDC and ESP. They suggest that the UDC may provide metering , billing
14 and information to Standard Offer customers under a tariff and to an ESP under a tariff. They further
15 suggest that the rule should also be amended to provide that an ESP may provide metering, billing
16 and information services for energy, transmission and distribution and no additional cost can be
17 imposed by the UDC in such circumstances.

18 NEV also comments that 1605.B is unclear as to under what circumstances customer
19 groups and trade associations who are aggregated would be required to be served under a certificate.
20 NEV believes that trade organizations who arrange energy for members with an ESP are not
21 aggregators and they should not be required to obtain a CC&N.

22 Citizens Utilities Company filed comments supporting 1605 insofar as it provides an
23 opportunity for the UDC to offer metering and billing services at tariffed rates. Citizens believes
24 that just as Standard Offer electric services provided by the UDC provides a safety net for Standard
25 Offer customers; these customers should also be protected with a safety net for metering and billing
26 and information services from the UDC. Citizens, however, believes that the rule amendment falls
27 short and that there should be additional language that Affected Utilities and UDCs may provide
28 meter reading billing and collection services within their service territory at tariffed rates.

1 Arizona Electric Power Cooperative, Inc.'s comments (incorporated from an earlier
2 filing) reflect that ancillary services are not required by FERC to be monopoly services.

3 The Attorney General's Office filed comments on September 18, 1998 which
4 incorporated previous comments it had filed. In these previous comments, the Attorney General had
5 commented that 1605.B was ambiguous and that it tied metering services to UDCs. The Attorney
6 General believes metering services should be competitive service that does not require a certificate,
7 but merely some kind of license regulation preventing consumer fraud. The Attorney General's
8 comments indicate that there should be no tying of metering to either UDCs or ESPs and that this
9 service should be open to the competitive market without Commission oversight.

10 ASARCO, Inc., Cyprus Climax Metals Company, Enron Corporation, Arizonans for
11 Electric Choice and Competition, Morenci Water and Electric Company, Ajo Water Improvement
12 Company and Phelps Dodge Corporation are entities who previously filed comments on 1605.B. In
13 previous comments, Enron has noted that there may be confusion concerning meter reading service
14 providers as a competitive service and refers to R14-2-1605.

15 **Staff Response:** Staff responds to the concerns of the ACAA by stating that
16 customers can bring complaints to the Commission under the normal complaint proceedings that the
17 Commission provides for consumer problems. It is Staff's recommendation that 1605.B not be
18 amended to provide for additional Commission oversight or certification of providers of the services
19 referred to in the comments because other provisions of the Commission's statutes and rules are
20 sufficient.

21 Staff does not believe that the rule needs to be amended as requested by New Energy
22 Ventures because it is clear from other provisions of the rules what services can be provided by the
23 UDC and the ESP and what tariffs need to be filed by both in order to provide services. The purpose
24 of 1605 is to define what constitutes competitive services and noncompetitive services and to further
25 explain that certain competitive services do not require a CC&N. This rule does not set out the
26 obligations between the UDC and ESP. Further, the rule is explicit that the ESP may provide
27 services described in 1605.B and that there is no reason to believe there will be a double charge for
28 the same services by the UDC under any of the rules' provisions.

1 Staff believes, despite NEV's assertion to the contrary, that the rule is clear in
2 providing that self-aggregation does not require a CC&N and that aggregation of retail customers
3 into a purchasing group is considered a competitive service. If the trade association provides or
4 negotiates a lower customer rate for its trade group but the individual customers enter into a
5 agreement with the ESP, under the rule that would not be considered aggregation if the individual
6 customers are billed for services and not the trade group organizer. A purchasing group requires
7 that one contract is entered into with the aggregator rather than with the individual customers.

8 These services are provided by the Affected Utilities and the UDCs under tariffed
9 rates and nothing in the rules precludes those services being provided if an ESP is unable to provide
10 them. To amend the rule as Citizens suggests is to broaden it beyond the intent. No rule change is
11 necessary.

12 The amendments to 1605.B merely reflect that noncompetitive services as defined
13 by the rules or as defined by FERC will continue to be provided by a monopoly. No rule change is
14 necessary as the result of the comments of AEPCO.

15 Although Staff agrees that metering services are competitive and the rules so provide,
16 at this point metering services still require a CC&N because of the consumer needs to have accurate
17 metering in a competitive environment that would be provided either by an appropriately certificated
18 ESP or UDC. Although metering technology may be developing quickly, at the present,
19 Commission oversight of this important aspect of providing reliable electricity continues to be
20 required. Therefore, despite the recommendation of the Attorney General's Office, no rule change
21 is necessary.

22 Under the rules, R14-2-1605 and its reference to 1606, meter reading service
23 providers are competitive service providers which require a certificate under the rules. Unless the
24 meter reading service is provided as a bundled transaction to Standard Offer customers, the services
25 can be provided by a properly certificated ESP or an Affected Utility or a UDC under the rules.
26 Despite the recommendation of ASARCO, et al. no change to the rule is necessary.

27 ...

28 ...

1 **V. Comments on R14-2-1606. Services Required To Be Made Available.**

2 **A. General Comments.**

3 Similarly, NEV is generally concerned that Affected Utilities and UDCs are
4 attempting to allocate costs unfairly to ESPs in their unbundled tariffs. NEV offered no specific
5 suggestions, but simply wanted to bring this issue to the Commission's attention as unbundled tariff
6 filings are analyzed.

7 NEV also, in previously-filed comments, requested that the rules be amended to
8 require that a final determination on unbundled tariffs be reached four months prior to the beginning
9 of competition.

10 **Staff Response:** While the comment warrants no change in the rule, Staff has always
11 operated under the assumption that it would be required to analyze unbundled tariff filings to ensure
12 that costs were properly apportioned, and present its rationale to the Commission for approval.

13 The timeframe to do that is, absent a delay in the onset of competition, now
14 impossible. Moreover, there is no inherent reason that the tariffs must be approved at any particular
15 date except at a time prior to the beginning of competition.

16 **B. R14-2-1606.A.**

17 APS also suggested that language be added to 1606.A that stated that services offered
18 at regulated rates would include recovery of all reasonable costs.

19 RUCO suggested that a conforming change be made to 1606.A, striking the words
20 "in that class" from the first sentence.

21 **Staff Response:** Regulated rates by definition include recovery of reasonable costs
22 to offer the service. Therefore, no change to the rule is necessary as the result of the APS comments.

23 Staff agrees with RUCO that this phrase should be stricken for consistency.

24 **C. R14-2-1606.B.**

25 Both APS and TEP suggest that the sentence allowing UDCs to ratchet down power
26 purchases for Standard Offer customers be stricken. APS states that it establishes a presumption in
27 favor of this over other risk management tools.
28

1 Citizens suggests that the rules should have more detail in 1606.B regarding power
2 purchased by a UDC.

3 ASARCO et al. suggest that 1606.B be amended to require that all competitive
4 services included in Standard Offer service be put to bid.

5 **Staff Response:** Staff specifically recommended that this provision could be waived
6 for good cause; therefore, no change to the rule is necessary.

7 Staff feels that, in response to the comment submitted by Citizens, that the rule
8 provides adequate detail and that no change is necessary.

9 Staff disagrees with the position of ASARCO, et al. that any competitive piece of
10 Standard Offer service should be put to bid. The idea of Standard Offer service was to continue with
11 "plain old electric service" during the transition period. Therefore, no change to the rules is
12 necessary.

13 **D. R14-2-1606.C.**

14 The Arizona Consumers Council that the statement in 1606.C.3. should be
15 strengthened to place a rate cap on Standard Offer service.

16 CellNet recommends that 1606.C include a specific reference to 1616 (the Affiliate
17 Rules) to "solidify" that unbundled tariffs should be filed for services listed only to the extent
18 allowed by other rules.

19 **Staff Response:** Staff disagrees. To the extent that a utility feels it needs a rate
20 increase, it should be allowed to file a rate case and present its evidence.

21 Staff believes that no clarification to the rules is necessary. Additionally, referencing
22 the rules as a package prevents one rule from being taken out of context.

23 **E. R14-2-1606.D.**

24 APS suggested striking information services as services required to be offered by
25 Affected Utilities. Additionally, APS suggested striking the word "ancillary" in 1606.D.7 such that
26 the sentence would read "Other services necessary for safe and efficient system operation."

27 **Staff Response:** Staff believes that information services are an important service
28 that can be offered in a competitive market. Staff further believes that the word ancillary is not

1 confusing and therefore recommends that no change to the rule be made on account of either of these
2 suggestions.

3 **F. R14-2-1606.G.**

4 The Attorney General's Office made no additional comments to this section, but
5 incorporated by reference "...all previous written comments and objections filed with the
6 Corporation Commission and verbal statements in hearings and open meetings...."

7 The comments filed by the Attorney General's Office on July 6 have largely been
8 incorporated into the existing proposed rules in front of the Commission. However, the Office has
9 suggested that R14-2-1606.G be amended to state that price not be included in the customer data to
10 be released by a Load Serving Entity.

11 In 1606 G.1 TEP suggests that a fee be charged for data requested from a Load
12 Serving Entity.

13 PG&E Energy Services indicated that 1606.G does not provide the opportunity for
14 interested persons to participate in the unbundled rate filings.

15 **Staff Response:** Price is not specifically articulated in this rule as being in the data
16 that the Load Serving Entity has to release, only demand and energy data is. However, whatever data
17 is released pursuant to the rule would be done only on the written request of the customer, who
18 should be able to release any data the customer wants released. No change to the rule is necessary.

19 Staff believes that data requested from Load Serving Entities should be freely
20 available to enhance a competitive market.

21 Staff disagrees with the suggestion that there is a lack of opportunity to participate.
22 Any interested party may apply to intervene.

23 **G. R14-2-1606.H.**

24 CellNet suggests that the provision in 1606.H.2 that requires that rates reflect costs
25 be eliminated is unnecessarily prescriptive. PG&E Energy Services also suggests that the language
26 in this paragraph is inappropriate in a competitive environment.

1 **Staff Response:** Staff believes that this is an appropriate requirement even in a
2 competitive environment; it exists in the telecommunications field. Therefore, Staff believes that no
3 change to the rule is necessary.

4 **VI. Comments on R14-2-1607. Recover of Stranded Costs of Affected Utilities.**

5 **A. R14-2-1607.C.**

6 Arizona Transmission Dependent Utilities commented on the lack of guidance
7 regarding burden of proof under various processes requiring documentation. As to R14-2-1607.C
8 the comment notes that the rule requires “fully supported” estimates of stranded costs.

9 **Staff Response:** The inference raised by the comment is that “fully supported” fails
10 to adequately define the requirements under the rule. To the contrary, “fully supported” provides
11 a high degree of definition as to the requirements under the rule. No change is necessary.

12 **B. R14-2-1607.D.**

13 RUCO proposed to rewrite to provide recovery from both customers taking
14 competitive service and from customers remaining on Standard Offer Service. RUCO proposed
15 recovery in each case by means of a non-bypassable neutral wires charge.

16 **Staff Response:** The rules currently contemplate recovery of stranded costs from
17 customers taking competitive service in a manner to be established in a utility specific proceeding,
18 based on standards outlined in the rules. Stranded cost recovery from customers not taking
19 competitive service occurs under the existing bundled rate and will continue to occur under the
20 Standard Offer rate. No change in the rule is necessary.

21 **C. R14-2-1607.E.**

22 The Land and Water Fund commented on R14-2-1607.E. LAW comments were to
23 the effect that the Commission should utilize the provisions of R14-2-1607.E to require that Affected
24 Utilities have fully met regulatory renewable resource commitments before being eligible for full
25 stranded cost recovery. LAW believes this to be permissible under the rule as written.

26 **Staff Response:** No change is necessary.

27 ...

28 ...

1 **D. R14-2-1607.F. (submitted by RUCO as 1607.E.)**

2 RUCO proposes to assess a Competitive Transition Charge on all customers
3 continuing to use the distribution system based on the amount of generation purchased from any
4 supplier. Citizens Utilities offered the same comment.

5 **Staff Response:** As described in the response to RUCO's comment on 1607.D,
6 stranded cost recovery from customers remaining on Standard Offer service will occur through their
7 Standard Offer rates. To charge such customers a CTC could over-recover stranded costs from those
8 customers. No change to the rules is necessary.

9 **E. General Comment.**

10 RUCO commented that stranded cost recovery should be reflected in all customers'
11 bills. RUCO purported to incorporate by reference the proposals made by Dr. Rosen at the
12 evidentiary hearings on stranded costs.

13 **Staff Response:** The evidentiary hearings on stranded cost were not a part of the
14 rulemaking process and the decision from that proceeding has decided the relative merits of Dr.
15 Rosen's proposals in that context.

16 **VII. Comments on R14-2-1608. System Benefits Charges.**

17 All comments on this section of the rules dealt with subsection A. Accordingly, the
18 comments will be grouped by the commentor along with Staff's response to each comment.

19 The Residential Utility Consumer Office stated that nuclear fuel disposal and nuclear
20 plant decommissioning programs should not be included in the System Benefits Charge (SBC).

21 **Staff Response:** Staff feels that it is appropriate to collect these costs through the
22 SBC.

23 RUCO also felt that the terms "market transformation" and "long-term public benefit
24 research and development" are vague and not defined.

25 **Staff Response:** "Market transformation" is a common utility industry term and does
26 not need to be defined. Use of the term "long-term public benefit research and development" is
27 meant to be broad in scope to provide the Commission with flexibility if in the future it wishes to
28 fund this type of program.

1 RUCO also pointed out that the terms "market transformation" and "long-term public
2 benefit research and development" are not included in the definition of System Benefits in R14-2-
3 1601.40.

4 **Staff Response:** Staff agrees that the definition of System Benefits in R14-2-1601.40
5 should be modified to include all items funded under R14-2-1608.

6 The Land and Water Fund discussed the SBC in its comments but did not propose
7 any changes to the rules.

8 Arizona Electric Power Cooperative, Duncan Valley Electric Cooperative, Graham
9 County Electric Cooperative, and Sulphur Springs Valley Electric Cooperative all filed identical
10 comments regarding the SBC as part of their request for rehearing in August, specifically stating that
11 the Commission does not have the lawmaking or judicial powers to order the implementation of the
12 solar water heater rebate program.

13 **Staff Response:** Staff believes the Commission has the power to order the
14 implementation of the solar water heater rebate program.

15 Tucson Electric Power commented that the SBC should include competitive access
16 implementation and evaluation program costs.

17 **Staff Response:** Staff does not believe that competitive access implementation and
18 evaluation program costs should be included in the system benefits charge.

19 While Arizona Public Service does not address the SBC in its September 17, 1998
20 comments, APS did address the SBC in its July 6 and July 22 comments. However, APS is not
21 consistent in its recommendation regarding when the SBC should be reviewed. In APS' July 6
22 comments, it says that the SBC should only be reviewed every three years. In APS' July 22
23 comments, it says that the SBC should be reviewed every three years and more frequent filings
24 should be allowed.

25 **Staff Response:** The present review period of three years should remain and should
26 generally determine the frequency of review. However, nothing prohibits UDCs from filing for
27 review more often.
28

1 APS also commented that it believed that customer education should be included in
2 the SBC.

3 **Staff Response:** Staff does not believe that customer education costs should be
4 included in the SBC.

5 APS further indicated that the word fuel is missing from the last sentence in R14-2-
6 1608(A).

7 **Staff Response:** The latest version of this section includes nuclear fuel disposal, so
8 APS' concern has been addressed.

9 Enron mentions the SBC in its July 2 comments, but does not make any proposals.

10 **VIII. Comments on R14-2-1609. Solar Portfolio Standard.**

11 **A. R14-2-1609. General.**

12 The Land and Water Fund of the Rockies suggests that the Solar Portfolio Standard
13 (SPS) has been compromised enough and should be implemented on schedule on January 1, 1999.
14 The LAW Fund points out that most of the August 1998 changes to the Solar Portfolio were the
15 result of recommendations of the Solar Portfolio Standard Subcommittee in response to criticisms
16 raised by Affected Utilities and others.

17 Tucson Electric requests that the rules explicitly state that an ESP is deemed in
18 compliance with the Portfolio Standard if it uses the product of a solar affiliate.

19 New Energy Ventures states that the Solar Portfolio Standard could impact the returns
20 that ESPs expect to recover in Arizona. NEV calculated projected costs of power with the solar
21 requirement using the penalty figure of 30 cents/kWh in an attempt to show that ESPs' profit
22 margins would be hurt by the Solar Portfolio. NEV also expressed concern that Salt River Project
23 (SRP) might include solar costs in their System Benefits Charge. Finally, NEV proposes that
24 Arizona does exactly what it fears SRP will do: replace the Solar Portfolio with a solar program
25 funded through the System Benefits Charge.

26 Arizona Electric Power Cooperative, Inc. in its July 6, 1998 comments (incorporated
27 by reference) criticized the Solar Portfolio Standard as expensive. AEPCO also challenged the
28

1 Commission's authority to establish the Solar Portfolio. AEPCO recommended striking R14-2-1609
2 in its entirety.

3 **Staff Response:** Staff agrees with the LAW Fund. Changes made to the Portfolio
4 Standard in August 1998 have greatly reduced the impact of the Solar Portfolio Standard on ESPs,
5 effectively lowering the costs and size of portfolio requirements.

6 Staff does not agree with TEP's suggestion to change the rules to explicitly state that
7 ESPs may use the solar products of an affiliate. The rules do not prohibit this activity, so there is
8 no need to amend the rules.

9 NEV's cost calculations are based on the penalty costs of not using solar generation.
10 Staff agrees that if NEV ignores the Portfolio Standard and pays the penalty, it will suffer profit
11 margin reductions. But, if NEV does use solar generation, and in particular, if NEV takes advantage
12 of the new extra credit multipliers, the result will be solar electricity at a fraction of the cost of the
13 penalty, with a reasonable profit margin as a reward.

14 Staff has seen no indication from SRP that it will attempt to put Solar Portfolio costs
15 in its System Benefits Charge. Staff recommends against adoption of NEV's idea to replace the
16 Solar Portfolio with a System Benefits Charge program. The intent of the SPS is to encourage all
17 Electric Service Providers to gain experience in the purchase, installation and operation of solar
18 generators, albeit starting at an extremely limited scale of only 2/10th of 1% of competitive
19 electricity sold.

20 Staff disagrees with AEPCO's assertions that the Portfolio Standard is expensive.
21 First, the costs of the Portfolio Standard will be an investment in a more diverse generation mix. To
22 draw an analogy, it is very "expensive" to operate "peaking" power plants for only a few days each
23 year during the summer peak, but nobody complains about the "expensive" use of peaking plants,
24 because they are an insignificant part of the generation mix. Peaking units often run less than 5%
25 of the potential annual operating hours, so their impact on the blended cost of power is miniscule.
26 They are "expensive" to run, but they make up an insignificantly small part of the portfolio of
27 electric generators. The same holds true for the solar electric generators that will provide only .2%
28 of 20% of the electricity provided to Arizona customers in 1999. In fact, the delivered cost of

1 electricity for many solar technologies can be less than the true delivered electricity costs of
2 electricity from a peaking plant.

3 In response to AEPCO's concern about the Commission's authority, Staff believes
4 that the Commission has clear jurisdiction in areas related to the provision of retail electricity to
5 Arizona customers by public service corporations. Staff believes that the Solar Portfolio Standard
6 should be left in the rules.

7 **B. R14-2-1609.A.**

8 Arizonans for Electric Choice and Competition (AECC) in its July 16, 1998
9 comments (incorporated by reference) expressed concern about the cost impact of Portfolio Standard
10 and requested that the implementation schedules be made more gradual.

11 Tucson Electric recommends that the initial Solar Portfolio percentage be reduced
12 to 1/10th of 1% and that the percentage should only increase by 1/10th of 1% each year, until a one
13 percent level is achieved. APS recommends a similar 1/10th of 1% starting point.

14 **Staff Response:** AECC's requests were answered in the August 1998 amendments
15 that reduced the initial standard to .2% and increased it gradually over five years. Staff disagrees
16 with TEP and APS about reducing the Solar Portfolio percentage to 1/10th of 1%. Original proposals
17 for the Solar Portfolio percentage in August 1996 were to start at 1%. That percentage was later
18 reduced by half in October 1996 due to Affected Utility complaints about their inability to meet the
19 standard. In August 1998, an amendment further reduced the starting percentage to .2%. With new
20 extra multipliers, which TEP, APS, and other utilities supported, the "effective percentage" will be
21 further reduced again to one-half or one-third of the nominal percentage. Staff believes that the
22 percentage has been reduced enough and that if the percentage were as low as 1/100th of 1% some
23 utilities would complain that it is "too much".

24 **C. R14-2-1609.B.**

25 Arizona Public Service expresses concern that during the amendments of the
26 Emergency Rules, proposed wording concerning a "kWh cost impact cap" failed to be included in
27 the rule. APS suggested new wording to make the application of the SPS to Standard Offer
28

1 customers in 2001 be contingent upon a Commission Order in 2000 establishing a specific cost per
2 kWh cap.

3 APS comments (incorporated by reference from July 6, 1998 comments),
4 recommended that the Solar Portfolio percentage should only increase to 1% in 2007.

5 **Staff Response:** Staff agreed with the recommendations of the Solar Portfolio
6 Standard Subcommittee to include the kWh cost impact cap. Unfortunately, it was not included in
7 the Emergency Rule Amendments. However, Staff believes that rule modifications made in August
8 1998 are better than the proposed kWh cost impact cap. First, the Solar Portfolio Standard will be
9 “locked in” from 2003-2012 at 1%, so the APS fear of an increase above 1% is unfounded. Also,
10 the new extra credit multipliers reduce the “effective cost” of solar electricity. So, if APS provides
11 one million kWhs of solar electricity for 12 cents per kWh, but qualifies for the new double credit,
12 APS can claim 2 million kWhs against its portfolio requirement, thereby creating an “effective cost”
13 of 6 cents per kWh.

14 **D. R14-2-1609.C.**

15 APS states that from the earliest draft of the rules, the Solar Portfolio Standard only
16 applied to competitive electric generation, but since the Emergency Rule adoption, it now also
17 applies to Standard Offer sales.

18 **Staff Response:** The wording in section 1609.C was nothing more than a
19 clarification of what was included in the original rule. The Portfolio Standard was designed to apply
20 to competitive customers during the phase-in period, but to apply to all customers once full
21 competition allows all customers access to competitive service. APS representatives were active
22 participants in the five-month Solar Portfolio Standard Subcommittee where calculations of MWs
23 of Solar Portfolio requirements clearly showed that 100% of electricity sales were subject to the
24 Portfolio requirement under full competition. APS clearly understood this, because their verbal and
25 written comments invariably warned of “hundreds of millions to billions of dollars” of costs to meet
26 its requirement. Those numbers contemplated all customers receiving solar electricity in full
27 competition.

1 **E. R14-2-1609.D.**

2 Arizona Public Service Company comments (August 6, 1998, incorporated by
3 reference) suggested that the Early Installation Extra Credit Multiplier be extended to at least 2005.

4 **Staff Response:** Staff believes that “early” installation should only be defined as the
5 first five years (1999-2003). After five years, there should be no incentive for “early” action.

6 **F. R-14-2-1609.F.**

7 Tucson Electric’s comments of July 6, 1998, (incorporated by reference) recommend
8 that any penalty funds be paid directly to the Affected Utility or UDC and that the investment is
9 monitored by the Commission.

10 APS, in its July 6, 1998 comments (incorporated by reference), recommended against
11 penalty funds going to a Solar Electric Fund. Instead, APS recommended a 30 cent/kWh wires
12 charge to be used for solar projects. The revenues from the solar projects financed by the wires
13 charge would be used to offset System Benefits Charges.

14 **Staff Response:** Since it is likely that penalty funds may apply in many, if not all,
15 of the Affected Utilities’ service areas, paying funds to the UDC would only divide the funds into
16 a number of small accounts, possibly too small to efficiently use the money for solar projects. One
17 Solar Electric Fund, as designated by the rule, would collect all penalty amounts into a single, large
18 fund. By allocating those funds to “public entities” the Solar Electric Fund would benefit all
19 Arizona taxpayers who would otherwise be paying the public entities’ electric bills out of tax dollars.

20 Staff strongly disagrees with APS’ proposed 30 cent/kWh wires charge. First, the
21 30 cent penalty number was selected as a stiff penalty to encourage ESPs to obtain cheaper solar
22 electricity. By setting a flat 30 cent/kWh wires charge, there is no incentive for ESPs to find the
23 cheapest solar resource. The Portfolio Standard is designed to encourage the ESPs to search the
24 solar electricity marketplace for the lowest-cost solar electricity. By finding the most cost-effective
25 solar electricity, the ESPs will become more competitive. The competition for lowest-cost solar
26 electricity will put price pressure on solar manufacturers to lower prices in order to win ESP
27 contracts. This will bring down the delivered cost of solar electricity.

1 **G. R14-2-1609.H.**

2 PG&E Energy Services Corp. in its July 14, 1998, comments (included by reference)
3 expressed concern about section 1609.H which allowed solar electric generators installed by
4 Affected Utilities to meet Solar Portfolio requirements to also be counted toward meeting renewable
5 resource goals established in Decision No. 58643. Energy Services felt that this would cause unfair
6 competition between Affected Utilities and ESPs.

7 TEP and APS also suggested that the renewable goals in the IRP orders referenced
8 in 1609.H be repealed.

9 **Staff Response:** Staff disagrees with PG&E Energy Services. Without this
10 provision it would be the Affected Utilities that would be at a disadvantage. They would be subject
11 to both the Solar Portfolio Standard and the existing renewables goals. ESPs have no similar
12 renewables goal requirements.

13 Staff also disagrees with TEP's and APS' request to eliminate the renewable goals.
14 The intent of those goals, as well as that of the Portfolio Standard, was to encourage the
15 diversification of the electric generation mix away from a few conventional fossil-fuel technologies
16 into a broader mix of technologies that will be used in the 21st century. That objective is still valid.

17 **IX. Comments on R14-2-1610. Transmission and Distribution Access.**

18 **A. General Comments.**

19 New Energy Ventures suggested language be added to the effect that Staff should
20 work with ESPs and UDCs (including SRP) to develop a standard UDC service agreement and ISA
21 agreement over the two-year phase-in period. Under this proposal, the Staff would also coordinate
22 the ongoing development of standard operating procedures for UDCs (including SRP) to deal with
23 ESPs over this period.

24 **Staff Response:** Staff disagrees. At a time when the Commission is moving toward
25 allowing utilities more flexibility in the competitive market, it would be inappropriate for the Staff
26 to impose standardized agreements. If, however, ESPs can show the Commission that utility
27 agreements are unreasonable, Staff may, at a later time, get involved in developing standardized
28 agreements.

1 **B. R14-2-1610.H.**

2 Tucson Electric Power recommends that R14-2-1610.H be modified to allow the
3 Affected Utility to determine the units which are must-run with consideration of the efforts of the
4 Electric System Reliability and Safety Working Group findings as the Working Group may not
5 complete all efforts in time for the competition start date. Further, according to TEP, this section
6 should clearly state that the charges for must-run generation will be paid by all distribution
7 customers as a mandatory ancillary service.

8 **Staff Response:** Staff disagrees with both recommendations because the rule already
9 calls for the Affected Utilities to work with the Reliability and Safety Working Group, and
10 the rule already calls for the services from must-run units to be offered on a non-discriminatory basis
11 at regulated prices to both Standard Offer and competitive customers.

12 **X. Comments on R14-2-1612. Rates.**

13 **A. R14-2-1612.C.**

14 PG&E Energy Services Corporation (Energy Services) is proposing to eliminate the
15 requirement that contracts whose term is 1 year or more and for service of 1 MW or more must be
16 filed with the Director of the Utilities Division in R14-2-1612.C. Alternatively and minimally the
17 Commission must provide confidentiality for filed contracts.

18 **Staff Response:** Staff does not agree with this change to the rules because it is
19 important for the Commission to determine if contract pricing is above marginal cost. Since Staff
20 has always provided confidentiality for competitive contracts, no change to this rule is necessary.

21 **B. R14-2-1612.E.**

22 CellNet Data Systems is proposing to eliminate the phrase "provided that the price
23 is not less than the marginal cost of providing the service" stated in R14-2-1612.E.

24 **Staff Response:** Staff believes this change to the rules should not be made because
25 this language serves as the method the Commission will use to determine predatory pricing of
26 particular services. CellNet has pointed out that this rule is not very specific as to whether the
27 marginal cost will be by each customer or hour by hour. Staff does not believe it is appropriate to
28

1 be more specific, given that Staff's analysis of marginal cost will vary depending on a number of
2 factors.

3 **XI. Comments on R14-2-1613. Service Quality, Consumer Protection, Safety, And Billing**
4 **Requirements.**

5 **A. R14-2-1613.C.**

6 RUCO has suggested that the proposed rule should be revised to clarify slamming
7 by adding the language: Violations of the Commission's rules concerning ~~slamming~~ unauthorized
8 changes of providers may result in ~~finest and penalties, including but not limited to~~ and/or suspension
9 or revocation of the provider's certificate.

10 **Staff Response:** Staff agrees with proposed change.

11 **B. R14-2-1613.D.**

12 RUCO proposes inserting a new rule D as follows, and renumbering to conform:
13 D. A customer with an annual load of 100,000 kWh or less may rescind its authorization to change
14 providers of any service authorized in this Article within 3 business days, without penalty, by
15 providing written notice to the provider.

16 **Staff Response:** Staff agrees with proposed change.

17 **C. R14-2-1613.H.**

18 AEPCO, DVEC, and GCEC suggest that, in subsection H, after the words "to their
19 customer" add "and to the appropriate Utility Distribution Company."

20 **Staff Response:** Staff agrees with proposed change.

21 **D. R14-2-1613.J.**

22 RUCO proposes changing the existing language as follows: Competitive customers
23 with hourly loads of 20kW (or 100,000 kWh annually) or less, ~~will~~ shall be permitted to use Load
24 Profiling to satisfy the requirements of hourly consumption data. ; however, they may choose other
25 metering options offered by their Electric Service Provider consistent with the Commission's rules
26 on metering.

27 CellNet suggests requiring the use of EDI for consistency in the release of meter data
28 in paragraph J.1. with other data exchange provisions in the rules.

1 CellNet also proposes clarifying changes to paragraph J.4.

2 In paragraph J.5, CellNet wants to include a date by which Affected Utilities must
3 provide a consistent statewide set of EDI formats for DASR transactions.

4 CellNet proposes, in paragraph J.6 changing the 100,000 kWh annual requirement
5 to an "8,250 kWh in any of the previous 12 consecutive months" requirement.

6 RUCO also proposes changing the language of subsection J., paragraph 8 as follows:

7 Meter ownership will be limited to the Affected Utility, Utility Distribution
8 Company, the Electric Service Provider, or the customer, who ~~will obtain~~ obtains the meter from the
9 Affected Utility, Utility Distribution Company, or an Electric Service Provider.

10 CellNet states that paragraph J.9 should not be construed that the provision of
11 metering equipment maintenance and servicing can be provided by an Affected Utility other than
12 through an Affiliate, provided those competitive services are available to the customer.

13 RUCO requests that in paragraphs J.13 through J.15, certain metering standards
14 approved by the Director of the Utilities Division be included in the rules.

15 **Staff Response:** Staff disagrees with these proposed changes as they change the
16 original intent of the rule. Load profiling is the least expensive option for the smaller customers.

17 In response to CellNet's suggestion on paragraph J.1., Staff recommends that the
18 following changes be made: After the word "access", add "using EDI formats" and after "data" add
19 "to".

20 Staff agrees with CellNet on paragraph J.4 and suggests that the following changes
21 be made: After the word "into", delete the word "a". Change the word "format" to "formats".

22 Staff has contacted the largest Affected Utilities and they indicate that they will have
23 the formats available by the start date for competition, therefore no change to the rule is necessary.

24 Staff disagrees with proposed change to paragraph J.6.

25 Staff agrees with proposed change to 1613.J.8.

26 Staff believes that the response to CellNet's comment on paragraph J.9 is covered in
27 section R14-2-1616.

28 Staff disagrees with RUCO's proposed changes to R14-2-1613 J.13 through J 15.

1 **D. R14-2-1613.K.**

2 CellNet suggests that in this section the Commission consider establishing a working
3 group to monitor and offer recommendations on various market operations issues that may arise after
4 January 1, 1999.

5 **Staff Response:** Staff believes that this can be accomplished by allowing the
6 Metering and Billing and Collections Committees to continue meeting until all issues are resolved.

7 **XII. Comments on R14-2-1614. Reporting Requirements.**

8 Both New Energy Ventures and Arizona Public Service commented that generally
9 the reporting requirements were too burdensome, but did not make any specific suggestions other
10 than to work with Staff.

11 **Staff Response:** No change to the rule is necessary.

12 **XIII. Comments on R14-2-1615. Administrative Requirements.**

13 NEV asserted in previously-filed comments that in a competitive environment, ESPs
14 should not be required to file tariffs or obtain Commission approval for competitive services and
15 recommended that subsections A. and B. be deleted. Enron, in previously-filed comments, has
16 expressed similar concerns.

17 **Staff Response:** Staff disagrees. In a budding competitive environment, tariff filings
18 with maximum rates are necessary to protect the public interest. The tariffs are contemplated to give
19 ESPs as much room as possible to compete. This system has worked well in the telecommunications
20 industry, and can work well as a competitive electric environment grows. Therefore, no change to
21 the rule is necessary.

22 **XIV. R14-2-1616. Separation Of Monopoly And Competitive Services.**

23 **A. R14-2-1616.A.**

24 Asarco, Inc., Cyprus Climax Metals Company, Enron Corporation, Arizonans for
25 Electric Choice and Competition, Morenci Water and Electric Company, Ajo Water Improvement
26 Company and Phelps Dodge Corporation are entities who previously filed comments. The
27 previously filed comments of Enron indicate that the wording in 1616.A is confusing and should
28 be broken into subsections. As a related matter, Enron comments that consumers should be entitled

1 to credits beginning on January 1, 1999 because asset transfers or divestiture will occur at some later
2 time and customers need to understand pricing options during the transition period related to
3 stranded costs.

4 **Staff Response:** Staff believes Enron's concerns related to customer pricing options
5 are taken care of by the unbundled tariff requirements reflected under the rules. These pricing
6 options will be clear when the utilities and the ESPs list out the unbundled cost components of
7 providing service, which is required during the transition period and thereafter. As for the alleged
8 confusion in subsection A. of 1616, Staff believes the language as written clearly requires divestiture
9 or asset transfer of the Affected Utilities and no change to the rule is necessary.

10 **B. R14-2-1616.B.**

11 AEPCO's comments indicate that it would change the date in Section B from January
12 1, 1999 to January 1, 2001 to conform with Section A of the rule.

13 Arizona Public Service Company alleges a conflict exists between 1606.D and
14 1616.B resulting in a gratuitous rule provision. As a result, APS requests that these rules be clarified
15 to not be gratuitous and alleges that interpretations of 1616.B could result in a conflict with R14-2-
16 1613.J (9 through 11). In order to clarify, APS requests that everything after the first sentence be
17 deleted from 1616.B.

18 CellNet comments address 1616.B. CellNet indicates that the third sentence of
19 1616.B should be deleted because it is confusing.

20 **Staff Response:** In response to AEPCO's comments, Staff believes the rule should
21 not be amended. Section B applies to the transition period that commences on January 1, 1999. To
22 change it to January 1, 2001 would leave that transition period in ambiguity. The Staff
23 recommendation is that no change to Section B is necessary.

24 Staff believes that 1616.B should remain as amended. The rules provisions explain
25 the application of when the Affected Utility and the UDC may bill its own customers for certain
26 services or provides services to ESPs. It also explains that although there must be divestiture of
27 generation and competitive services, the Affected Utility or the UDC does not need to separate
28 services when they are providing them as a bundled service to Standard Offer customers or when

1 customers take generation on the competitive market do not have access to these services from
2 another provider. Rather than clarifying the rule by deleting these subsequent provisions, the rule
3 would not be as clear as it now is. Staff therefore disagrees with APS and does not believe the rule
4 should be changed.

5 Staff does not agree with CellNet that the third sentence of 1616.B should be deleted.
6 Rather than creating confusion, the sentence clarifies that the rule does not require an Affected
7 Utility or UDC to separate assets or services used in providing metering, billing and information
8 services to its customers under the circumstances defined in 1616, namely when their customers do
9 not have access to these services from other providers or when the Affected Utility or UDC is
10 providing these services to its own customers for distribution services or providing the billing
11 services to ESPs. Staff's recommendation is that the rule should not be changed. CellNet also
12 indicates that it is confusing in the last sentence of 1616.B that the word "may" is used. CellNet
13 believes this word may offer the Affected Utility and the UDCs an opportunity to provide services
14 not otherwise warranted under the rules. It is clear under that last sentence that it only applies to
15 customers who do not have access to these services from other sources. Staff does not believe that
16 the rule should be changed.

17 **C. R14-2-1616.C.**

18 Tucson Electric Power Company suggested that in 1616.C, additional language is
19 needed to include Arizona Electric Power Cooperative, Inc. and its affiliates from competing in the
20 retail electric market while utilizing the services of the distribution coops.

21 **Staff Response:** Because AEPCO, as a generation cooperative, is required to
22 separate its generation and other competitive services from itself as an Affected Utility, under the
23 provisions of Section A, Staff does not believe that it needs to be included under Section C. AEPCO
24 does not have distribution services to which Section C of the rule would apply.

25 **D. R14-2-1616. General Comments.**

26 New Energy Ventures believes that its comments related to 1605 above to clarify the
27 meter, billing and information services of UDCs and ESPs also applies to 1616.

28

1 AEPCO's comments on September 18, 1998 also incorporated by reference previous
2 comments it had made concerning proposed rule amendments. In those comments, AEPCO
3 suggested that 1616 should be struck in its entirety because it placed limitations on the Affected
4 Utilities' ability to provide competitive services without divesting or transferring its generation
5 assets to an affiliate.

6 AEPCO also asserts that the Commission lacks jurisdiction to require divestiture or
7 transfer of competitive generation assets from an Affected Utility.

8 Citizens Utilities Company commented that once divestiture of generation occurs,
9 related stranded costs would be determined and a method established for recovery that would include
10 generation or power supply to all of Citizens' customers including Standard Offer customers. As
11 consequence, if the CTC charge would be collected only from competitive customers, and Standard
12 Offer customers would be free from all the stranded costs resulting or determined by divestiture of
13 Citizens' power contract with APS, the stranded cost would be greater than any power cost savings.
14 Therefore, customers would be unlikely to switch to competitive supply. Citizens believes that if
15 the rule for divestiture of generation assets continues to be a requirement that the transition charge
16 or the CTC charge should be applied to all customers including Standard Offer customers.

17 **Staff Response:** No rule change is necessary. See above for 1605 for NEV.

18 As an Affected Utility, AEPCO is a regulated monopoly. If competitive services
19 were provided by the Affected Utility as AEPCO suggests in its comments, there would be difficulty
20 in separating the competitive services from the monopoly services and subsidization may occur. It
21 is only through divestiture of competitive services or the transfer of competitive services to an
22 affiliate that subsidization and crossovers between monopoly and competition within a regulated
23 entity can be prohibited. As for AEPCO's comments that the rules places limitations on Arizona
24 utilities without similar constraints upon ESPs, Staff's response is that the Commission is concerned
25 with the regulation of Arizona monopolies and subsidization of competitive services provided in this
26 state. Our concern goes directly to whether or not the Affected Utility will use its monopoly rates
27 from Arizona ratepayers to subsidize competitive activities. These concerns would not be reflected
28 in the provision of competitive services by Energy Service Providers in Arizona who have an

1 affiliate or another entity that provides competitive regulated services in another jurisdiction. Staff
2 does not agree that 1616 is unduly restrictive and certainly does not concur that it should be stricken.

3 The Commission's jurisdiction in ratemaking under its constitutional powers provides
4 that the Commission can classify services such as generation as a competitive service in order to set
5 just and reasonable rates; the Commission can also require that the Affected Utilities transfer these
6 assets in order to carry out the Commission's constitutional responsibilities in setting just and
7 reasonable rates in a competitive environment, as the Commission determines is necessary.

8 The CTC charge is applied to all customers including Standard Offer. Citizens'
9 analysis does not take into account that Standard Offer customers will be billed for CTC charges
10 included in the Standard Offer at a specific rate indicated on their bills. Once competition is
11 complete and generation is bid by the UDC, all customers will be charged with any CTC
12 requirements on their bill. Staff does not recommend any changes to the requirement for divestiture
13 auction based on Citizens' comments.

14 **XV. Comments on R14-2-1617. Affiliate Transactions.**

15 **A. R14-2-1617.A.**

16 While New Energy Ventures supports the need to prevent leveraging off incumbents,
17 it submits that there may be situations where materials should properly reference coordination of
18 generation and distribution issues between UDC and ESP, including affiliates. The Company
19 recommends adding, "...potential customer except for any issues related to the coordination of the
20 UDC and ESP as provided for under these rules" to 1617.A.5.

21 The Residential Utility Consumer Office states that paragraph A.7, requiring that
22 transfers of non-tariffed goods from an Affected Utility to an affiliate be at the higher of fully-
23 allocated cost or market price should be amended to explicitly state that this provision applies to an
24 Affected Utility's divestiture of its generation assets to an affiliate.

25 **Staff Response:** Staff believes that the existing rule provides adequate protection
26 to prevent the leveraging that NEV references, while providing sufficient flexibility for coordination
27 between ESPs and UDCs as necessary.
28

1 Staff disagrees with RUCO's suggestion on R14-2-1617.A.7. R14-2-1616.A. covers
2 these types of transactions. No change to the rule is necessary.

3 **B. R14-2-1617.D.**

4 The Attorney General's Office suggests that R14-2-1617 should specifically require
5 the severance of UDC functions from ESP functions. Risks to competition are not so much that an
6 Affected Utility will share office space with affiliate, but rather, that it can leverage its retail position
7 by control of information to customers, data and access. 1617.E should be deleted as it creates a
8 most favored nations pricing mechanism which allows a discount to an affiliate as long as the same
9 pricing is offered to non-affiliate. May also cause public posting of pricing which could facilitate
10 price coordination, and should be amended to make retail prices confidential.

11 **Staff Response:** The nondiscrimination provisions of R14-2-1617.D., Staff believes,
12 are adequate to prevent UDCs from unfairly sharing information with their affiliates to the detriment
13 of competition. Therefore, no change to the rule is necessary.

14 **C. R14-2-1617.E.**

15 Citizens requests that the Commission open a generic docket to address affiliate
16 interest issues as they apply to all competitive utility service, whether gas, electric telephone or
17 water. 1617.E remains unclear on audit procedures since the annual performance audits are due on
18 December 31 of each year. The time needs to be extended so that all pertinent data can be gathered
19 through the end of the year.

20 **Staff Response:** A generic docket examining all affiliate issues is beyond the scope
21 of this proceeding. Staff agrees that the rule should be clarified to either require the independent
22 audit on December 31 covering a period ending prior to December 31, or to require the audit cover
23 the period through December 31, but be prepared after December 31.

24 **D. General.**

25 AEPCO asserts that provisions of this rule are unworkable for customer owned
26 cooperatives. Because they are somewhat small, cooperatives will not benefit from transferring all
27 competitive services into a separate affiliate, and instead, will drive up costs. They suggest striking
28 the provisions of this rule based on the theory that the Commission has exceeded its authority. In

1 the alternative, the cooperatives urge the Commission to consider a rule that would require both
2 Affected Utilities and Electric Service Providers to file, prior to January 1, 2000, a plan/code of
3 conduct to regulate affiliate transactions. All plans would be subject to approval by the Commission.

4 APS states that no commenting party has opposed its suggestion that the rule apply
5 equally to ESPs that are affiliated with monopoly utilities out-of-state. APS believes that the
6 Commission should make ESPs comply with affiliate restrictions as a condition to certification,
7 bolstered by the independent audit language for enforcement purposes. The Company proposes to
8 fix problems inherent with rule 1617 by amending rule 1603 to include:

9 R14-2-1603 (B) (8)

10 A proposed compliance plan, as that term is used in Rule 1617 (E), demonstrating
11 the applicant's compliance with the restrictions of Rule 1617 if the applicant is affiliated with any
12 entity that would be classified as a Utility Distribution Company if such entity were under the
13 Commission's jurisdiction.

14 R14-2-1603 (H) (8)

15 The Electric Service Provider shall comply with the provisions of R14-2-1617 if
16 the Electric Service Provider is affiliated with any entity that would be classified as a Utility
17 Distribution Company if such entity were under Commission jurisdiction.

18 ASARCO, et al. have suggested in their comments that a strict code of conduct should
19 be developed to prevent illegal interaction between generating entities and regulated entities. This
20 code should address at least the following:

21 1) Policies for allocating costs between non-competitive and competitive activities
22 to avoid cross-subsidization,

23 2) Policies to prevent employees providing non-competitive services from directing
24 retail electric customers to Affected Utility's competitive services,

25 3) Policies to prevent employees from transferring proprietary information gained
26 in the performance of noncompetitive services to employees engaged in performing competitive
27 services without consent of retail customer,
28

1 4) Policies to provide retail electric customers with complete and accurate disclosure
2 of competitive and noncompetitive services,

3 5) Policies to prohibit preferential treatment when providing non-competitive
4 services based on retail customer's provider of competitive services.

5 TEP also filed comments indicating that this section should not be adopted at this
6 time. Further input by Affected Utilities is needed, and an assessment should be made whether
7 affiliate rules give competitive advantage to non-Affected Utilities. Specific suggestions include:
8 add a provision requiring Affected Utilities' generation affiliates to offer power to all parties on the
9 same terms such output is offered to its affiliate UDC pursuant to bulletin board requirement as used
10 by FERC. Prevent cross-subsidization and eliminate section 1617.A.1 and 1617.A.6. 1617.D
11 should apply to new market entrants as well as Affected Utilities.

12 Additionally, in previously-filed comments, TEP suggests that, at the very least,
13 1617.A.6 should contain a waiver provision upon demonstration by an Affected Utility that
14 appropriate measures have been implemented to ensure that the utilization of common board
15 members and corporate officers does not allow for sharing of confidential information with affiliates.
16 Also, the section should grandfather cost allocation arrangements which have been previously
17 approved by the Commission (i.e. TEP holding company issue). Proposed revisions are silent on
18 who should bear the costs of complying with this section.

19 **Staff Response:** No company is required to establish an affiliate. One must only do
20 so if it wishes to offer certain competitive services. Additionally, R14-2-1616 allows Affected
21 Utilities and UDCs themselves to offer services that are not readily available to customers within
22 their service territories. Staff believes that no change to the rule is necessary based on the AEPCO
23 comments.

24 In response to APS' comments, the intent of R14-2-1617 is to ensure that incumbent
25 Affected Utilities and their successor Utility Distribution Companies do not exercise market power
26 to the detriment of competition. ESPs entering the market will not have such power. Therefore, no
27 change to the rule is necessary.
28

1 Staff believes that the totality of R14-2-1617 sets the parameters to prevent this type
2 of activity from occurring. Codes of Conduct as recommended by ASARCO et al. for individual
3 companies are beyond the purview of these rules, so long as they are within the overall parameters
4 of the rule. No change is necessary.

5 Staff disagrees with TEP's assertion that a rule on affiliate transactions is not needed.
6 Staff further disagrees that a rule establishing a FERC-type bulletin board is necessary. Generation
7 will no longer be regulated by the ACC and market forces will dictate the terms on which power is
8 sold to parties. Finally, Staff would point out that waivers from any rule may be granted by the
9 Commission for good cause shown.

10 **XVI. Comments on R14-2-1618. Disclosure of Information.**

11 APS, Citizens, TEP, AEPCO, Duncan Valley, Graham, and Sulphur Springs claim
12 that rule 1618 as a whole is burdensome, costly, and unnecessary. Citizens, New Energy Ventures,
13 PG&E Energy Services, and TEP believe that it will be difficult to obtain fuel mix information for
14 all of the power they obtain. Most of the Affected Utilities also believe that the Commission should
15 delete the current rule and form a working group to undertake additional study regarding disclosure
16 methods and requirements.

17 **Staff Response:** A.A.C. R14-2-1618.I already includes a reference to a study group
18 for these issues. Furthermore, R14-2-1618.A recognizes that there are efforts underway to develop
19 uniform tracking methods for determining fuel mix and emissions characteristics. Finally, R14-2-
20 1618.C delegates authority to the Utilities Division Director to develop the format and reporting
21 requirements for the customer information label. The Utilities Division Director will therefore have
22 the ability to develop a format that is reasonable and appropriate given the current status of the retail
23 electric industry. Entities that believe that they will be unable to comply with some or all of the
24 rule's provisions may seek a variance pursuant to R14-2-1615.C. Staff believes that the disclosure
25 requirements are necessary in order to enable customers to receive information that can be easily
26 compared among providers. Staff believes that the existing provisions of the rules adequately
27 address the concerns raised by the Affected Utilities. Therefore, no change is recommended.
28

1 ASARCO, Inc., Cyprus Climax Metals Co., Enron Corp., Arizonans for Electric
2 Choice and Competition, Morenci Water and Electric Co., Ajo Improvement Co., and Phelps Dodge
3 Corp. (collectively, "AECC") suggest adding the words "if any" to the requirement that Load
4 Serving Entities disclose price variability information. They note that many contracts may be for
5 a fixed price, whereas the rule seems to imply that variability is a given. Also, they believe that the
6 terms of service should indicate whether service is firm or interruptible. They also believe that the
7 terms of service should state which party is responsible for paying delivery related costs, such as
8 transmission service, ancillary services (including energy imbalance charges), and the cost of must-
9 run generation. They note that it is likely that ancillary service costs will be billed directly to the
10 Scheduling Coordinators, who may then pass those costs on to ESPs. The ESPs may then decide
11 whether to include these costs in their price offerings to customers. AECC believes that the terms
12 of service should make it clear whether these types of charge will be passed on to the customer.

13 **Staff Response:** These suggestions seem to be aimed at making the Terms of Service
14 more helpful and informative to customers. Staff believes that these suggestions should be adopted.

15 Citizens contends that distributing the disclosure label, the disclosure report, and the
16 terms of service to any retail customer initiating service and to each retail customer on an annual
17 basis would be costly. Citizens suggests that the Commission require Load Serving Entities to
18 inform customers that such information is available. Citizens further suggests that Load Serving
19 Entities be required to provide this information to any person upon request. Similarly, RUCO urges
20 caution in establishing mandatory disclosure requirements. If customers are overwhelmed with
21 information about generation choices, they may be deterred from entering the competitive market.
22 Essential pricing data should be provided to customers, but fuel mix and emissions data should not
23 be required for disclosure to all customers. These items could be available upon request.

24 **Staff Response:** Staff believes that the information required to be disclosed by R14-
25 2-1618 will enable customers to make informed decisions in the competitive environment. Staff is
26 therefore in favor of more, rather than less, dissemination of information. Staff notes that UDCs
27 should be able to include this information as a bill insert; accordingly, there will be an existing
28

1 vehicle through which UDCs may provide this information on an annual basis. No change is
2 recommended.

3 New Energy Ventures and PG&E Energy Services recommend applying the
4 disclosure requirements only to residential customers. Staff notes that R14-2-1618 already excludes
5 customers over one megawatt. Many commercial customers have relatively small loads and will
6 benefit from disclosure information as much or more than commercial customers.

7 **Staff Response:** No change is recommended.

8 **XVI. Comments On R-14-2-201 et seq. Electric Utilities**

9 **A. R14-2-203.C.**

10 PG&E Energy Services Corporation (Energy Services) is proposing to modify R14-2-
11 203.C to include a provision that states that an ESP does not have to provide service to any class that
12 it does not have a product or service offering for.

13 **Staff Response:** Staff believes this change to the rules is not necessary because it
14 was not Staff's intent to use this rule to force ESPs to offer services that ESPs do not have product
15 or service offerings for.

16 **B. R14-2-203.D.**

17 RUCO proposes that paragraph D.4 should only apply to customers who are
18 switching. Electric Service Providers and should not apply to customers who are establishing
19 new electric service. RUCO proposes to add the following sentence to the end of paragraph D.4:
20 "This section shall not apply to the establishment of new service, but is limited to a change of
21 providers of existing electric service."

22 **Staff Response:** The time frames stated in paragraph A.4. should be limited to
23 switching ESPs. Staff agrees with this change.

24 **C. R14-2-210.A.**

25 RUCO proposes that customers be permitted to authorize meter reading schedules
26 that are either longer or shorter than the 25 to 35 day presumptive period stated in paragraph A.1.
27 RUCO proposes to move the words "without customer authorization" which appears in the second
28 sentence of paragraph A.1. to the end of that sentence.

1 RUCO further states that the Commission has no authority to impose penalties on
2 customers of utility services. RUCO proposes to remove the last sentence of paragraph A.3.d.

3 RUCO further states that A.6.c should be moved to paragraph A.5.d to require that
4 an estimated bill is not permitted if the utility can obtain a customer supplied meter reading.

5 CellNet Data Systems (CellNet) is proposing to modify R14-2-209.A.9. to read
6 "Meters shall be read, at a minimum, monthly..."

7 **Staff Response:** Staff agrees with the proposed RUCO change to paragraph A.1.
8 because customers should be able to authorize both longer and shorter periods.

9 In response to RUCO's comment on paragraph A.3.d., it was not Staff's intention to
10 impose penalties for equipment failures on customers of utility services. To clarify its intention,
11 Staff would propose to insert "for Meter Service Providers" after the word "penalties" in the last
12 sentence of paragraph A.3.d.

13 Staff agrees with RUCO that paragraph A.6.c should be moved to paragraph A.5.d
14 because this change results in a clearer definition of when a customer supplied meter reading must
15 be used versus when a bill may be estimated.

16 Staff believes that the proposed CellNet change to the rule is not necessary because
17 R14-2-210.A. allows for longer periods or shorter periods for meter reading with customer
18 authorization.

19 **D. R14-2-210.C.**

20 RUCO proposes changing paragraph C.1 from: utility bills are due no later than 15
21 days after they are rendered, to: bills shall be due no sooner than 15 days after they are rendered.

22 **Staff Response:** Staff believes the time period of 15 days for paying bills as stated
23 in the rules is reasonable. Consequently, Staff believes no change is necessary to paragraph C.1.
24 Additionally, it is clear from the last sentence of paragraph C.1 that a late payment charge will not
25 be applied until 15 days after the bill has been rendered.

26 ...

27 ...

28 ...

1 **E. R14-2-210.E.**

2 RUCO contends that the language in paragraph E.1 duplicates and slightly contradicts
3 the language in R14-2-209. F. RUCO proposes to eliminate the paragraph E.1 in favor of the
4 broader language in R14-2-209. F.

5 RUCO is further proposing changes that would remove the words "Company will"
6 and insert the words "utility or billing entity shall" in paragraph E.1.a and b.

7 In paragraph E., CellNet is proposing to reference the metering standards approved
8 by the Director of the Utilities Division.

9 **Staff Response:** Staff believes there may be some contradiction between paragraph
10 E.1 and R14-2-209.F. but does not agree with RUCO's recommended changes. In the first sentence
11 of paragraph E.1., Staff recommends that the word "Reader" be deleted and the words ", or the
12 customer's Electric Service Provider, Utility Distribution Company (as defined in A.A.C. R14-2-
13 1601) or billing entity" be inserted after the first "customer". These changes will result in paragraph
14 E.1. conforming with R14-2-209. F.

15 Staff believes the changes in E.1 are consistent with other changes that Staff is
16 recommending and should be adopted.

17 Staff believes that CellNet's suggestion is not necessary because the metering
18 standards are already referenced by R14-2-1613.J.15.

19 **F. R14-2-210.F.**

20 RUCO is proposing changes that would broaden the terms in these paragraphs to
21 include financial institutions, not, just banks and to include methods of payment other than checks.

22 **Staff Response:** Since it was not Staff's intent to limit the type of institution
23 or method of payment, Staff believes these proposed changes should be adopted.

24 RESPECTFULLY SUBMITTED this 2nd day of October, 1998.

25
26
27
28

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1 Original and ten copies of the
2 foregoing filed this 2nd day
3 of October, 1998 with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington Street
7 Phoenix, Arizona 85007

8 A copy of the foregoing was
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10 1998 to:

11 All parties on the service list for
12 Docket No. RE-00000C-94-165

13 By Mary Spolito
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